

application by the Kalispel Tribe of Indians of Washington to conduct gaming on off-reservation land already held in trust for other purposes. In the Kalispel case, DOI appears to have followed the policy of requiring the support of state and local communities, but refused to engage in a presumption of economic harm to nearby tribal casino operators, as it did with respect to the St. Croix Chippewa in the Hudson denial.⁴⁰⁴

⁴⁰³(...continued)

acquisition of land for a casino parking lot as a use for which the two-part Secretarial determination was required. According to some witnesses, including Babbitt, the land to be acquired was considered contiguous to the existing Pequot reservation, which would fit it under a different exception of IGRA and did not require the two-part determination. Regardless of whether the application was treated as one governed by Section 465 and its Part 151 regulation or both Section 465 and Section 20(b)(1)(A), witnesses agreed that local opposition was relevant even to non-gaming acquisitions (via the application of the Part 151 regulations). Moreover, the Hudson decision letter itself provides that each of the factors on which the denial under Section 20(b)(1)(A) is based, including local opposition, is an appropriate basis for denial under Section 465 of IRA, which applies to all acquisitions. Accordingly, DOI's effective dismissal of community opposition in May 1995 in the Pequot acquisition appears inconsistent with the July 1995 Hudson decision, where great weight was given to community opposition.

⁴⁰⁴As cited in Babbitt's letter seeking the Washington Governor's concurrence, the Department was required to make the two-part determination under Section 20(b)(1)(A) – the same provision of IGRA applicable to the Hudson application. DOI accepted the Area Office's December 1996 approval recommendation where the consultation record established support or non-opposition by the local communities and strong opposition by the tribal casino operator nearest the proposed site. (Some of the local community support appeared to dissipate, but apparently not until after DOI sought the Governor's concurrence.) The Area Office consulted nearby tribes within 100 miles and state and local officials within 30 miles of the site. One of the tribes consulted said it would not be affected, one did not respond and the Spokane Tribe, with three casinos all within 58 miles of the City of Spokane, strongly objected to the loss of business it would suffer. DOI concluded that the Spokane tribal opposition did not amount to "detriment" to the tribe under Section 20 because the Spokane Tribe operated casinos with slot machine gaming, whereas the applicants proposed to operate only table games and bingo. Thus, they would not be direct competitors. The fact that the Kalispel casino would be only five miles from the City of Spokane – from which all Washington casinos derived most of their patrons – was not deemed material because customers would not have to pass the Kalispel's casino on public roads to two of the Spokane Tribe's casinos. DOI's report of its approval provided:

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